

FILED*10 JUN 16 12:37USDC-OR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

TERRENCE C. HENDRIX,

Plaintiff,

Civil No. 10-333-CL

v.

REPORT AND
RECOMMENDATION

STATE OF OREGON,

Defendant.

CLARKE, Magistrate Judge.

Plaintiff's Application to *proceed in forma pauperis* (#4) is allowed subject to further review by the court. However, for the reasons set forth below, plaintiff's complaint should be dismissed, without service of process, on the basis that it is frivolous. See 28 U.S.C. § 1915(d).

BACKGROUND

Plaintiff, an inmate at the Crowley County Correctional Facility in Olney Springs, Colorado, filed a complaint "Within

the Admiralty" against the State of Oregon and "The people of the State of Oregon as well as Governor Ted Kulongoski and other described entities and individuals. No proper jurisdictional basis is alleged. Plaintiff's allegations are completely incomprehensible and fail to comply with the minimal pleading requirements of the federal rules.

STANDARDS

A complaint filed *in forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. §1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Neitzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640.

In determining whether a civil rights complaint is frivolous under § 1915(d), this court is mindful of the requirement to liberally construe the allegations of a *pro se* plaintiff and to afford the plaintiff the benefit of any doubt. Lopez, 939 F.2d at 883.

DISCUSSION

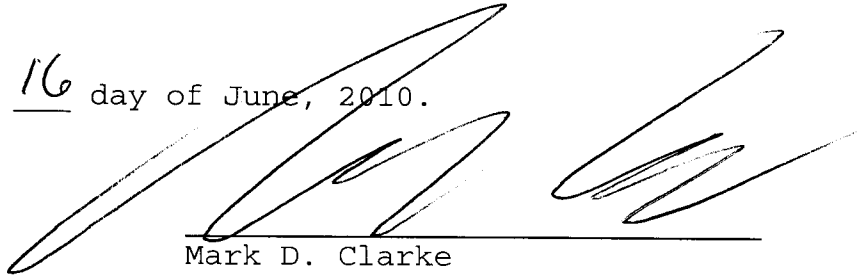
Plaintiff's allegations can best be described as gibberish. I find that regardless of how liberally plaintiff's complaint is construed, it fails to state a claim.

CONCLUSION

Based on the foregoing, plaintiff's complaint should be dismissed. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal should be with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 16 day of June, 2010.



Mark D. Clarke

United States Magistrate Judge